

Notice of Allowability

Application No.

10/750,026

Examiner

Christian L Fronda

Applicant(s)

MITSUHASHI ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to AMENDMENT IN REPLY TO ACTION OF SEPTEMBER 9, 2004, dated 12/03/2004.

2. ☒ The allowed claim(s) is/are 14, 16 and 25.

3. ☐ The drawings filed on _____ are accepted by the Examiner.

4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☒ Certified copies of the priority documents have been received in Application No. 09/770,517.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

☐ Notice of References Cited (PTO-892)

☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____

7. ☐ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____

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DETAILED ACTION

1. In the **AMENDMENT IN REPLY TO ACTION OF SEPTEMBER 9, 2004**, dated 12/03/2004, Applicants have canceled claims 1-13, 15, and 17-24.
2. Claims 14, 16, and 25 are pending and are under consideration in this Office Action.
3. The objection of the disclosure stated in the Office Action dated 09/09/2004 has been withdrawn in view of Applicants amendment to the specification which cross-references the instant application to Application No.09/770,517, filed on 01/26/2001, which is now US Patent 6,780,619, and claims priority from Japanese Patent Application Nos. 2000-019080, filed 01/27/2000, and 2000-150578, filed 05/22/2000.
4. The rejection of claims 17-24 under 35 U.S.C. 112, first paragraph, for lack of enablement is moot in view of Applicants' cancellation of these claims. The rejection has been withdrawn.
5. The rejection of claim 15 under 35 U.S.C. 102(b) as being anticipated by Grifantini et al (EP 0677585 A1, published 10/18/1995; PTO 892) is moot in view of Applicants' cancellation of the claim. The rejection has been withdrawn.

Allowable Subject Matter

6. Claims 14, 16, and 25 are allowed.
7. The following is an examiner's statement of reasons for allowance:
Applicants' novel and unobvious invention is directed toward a substantially purified D-aminoacylase from the filamentous fungus *Hypomyces mycophilus*. The prior art neither teaches nor suggests a substantially purified polypeptide comprising or consisting of the amino acid sequence of SEQ ID NO: 2. The prior art neither teaches nor suggests a substantially purified polypeptide encoded by a nucleic acid comprising SEQ ID NO: 1.
In the parent application Serial No. 09/770,517, filed on 01/26/2001, which is now US Patent 6,780,619, claims directed toward a method for making D-amino acids using the polypeptide of the instant application comprising the amino acid sequence of SEQ ID NO: 2 were allowed.

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8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Friday between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura N Achutamurthy can be reached on (571)272-0928. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christian L. Fronda
Patent Examiner
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ELIZABETH SLOBODYANSKY, PH.D
PRIMARY EXAMINER